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No. 99-368

IN THE

Supreme Court of the United States

KEVIN J. WILSON,

Petitioner,

v.

AREA PLAN COMMISSION OF EVANSVILLE AND VANDERBURGH COUNTY AND CITY OF EVANSVILLE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS

BRIEF IN OPPOSITION FOR RESPONDENT AREA PLAN COMMISSION OF EVANSVILLE AND VANDERBURGH COUNTY

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

The Respondent, Area Plan Commission of Evansville and Vanderburgh County (hereinafter "APC"), would restate the questions presented by the Petition for Writ of Certiorari as follows:

A. Whether the Zoning Code of Evansville, Indiana, as interpreted by the Indiana Court of Appeals, is facially invalid under the Free Exercise Clause of the First Amendment to the United States Constitution.[1]

B. Whether Zoning Code of Evansville, Indiana, impermissibly discriminates against "Christian oriented institutions".

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1. While Wilson also seeks to challenge the Special Use Ordinance's facial validity under the Establishment Clause, he failed to properly raise and present this issue in the state court. The Indiana Court of Appeals, therefore, held that Wilson waived the issue. *Area Plan Commission of Evansville and Vanderburgh County v. Wilson*, 701 N.E.2d 856, 863- note 6 (Ind. Ct. App. 1998). Accordingly, review of this issue by this Court is not warranted. *See Bankers Life and Casualty Co. v. Crenshaw*, 486 U.S. 71, 76 (1988).

TABLE OF CONTENTS

Page

Counterstatement of Questions Presented i

Table of Contents ii

Table of Cited Authorities iii

Table of Appendices vii

I. Counterstatement of Case 1

II. Reasons for Denying the Writ 3

A. The exercise of certiorari jurisdiction in this case will require the Supreme Court to review and overturn a state appellate court's interpretation of the meaning of a local ordinance. 4

B. The Indiana Court of Appeals correctly followed and applied the precedents of this Court. 9

C. The Special Use Ordinance does not impermissibly discriminate against "Christian oriented institutions". 15

III. Conclusion 17

TABLE OF CITED AUTHORITIES

Page

Cases:

Bankers Life and Casualty Co. v. Crenshaw, 486 U.S. 71 (1988) i

Board of Zoning Appeals v. Schulte, 241 Ind. 339 N.E.2d 39 (1961) 6

Board of Zoning Appeals of Decatur v. Decatur, Indiana Company of Jehovah's Witnesses, 233 Ind. 83, 117 N.E.2d 115 (1954) 6

Christian Gospel Church, Inc. v. San Francisco, 896 F.2d 1221 (9th Cir. 1990), *cert. denied*, 498 U.S. 999 (1990) 14

Church of Christ v. Metropolitan Board of Zoning Appeals of Marion County, 175 Ind. App. 346, 371 N.E.2d 1331 (1978) 14

Cochise County v. Broken Arrow Baptist Church, 778 P.2d 1302 (Ariz. App. 1989) 14

Eddy v. McGinnis, 523 N.E.2d 737 (Ind. 1988) ... 16

Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990) 9, 15

First Assembly of God of Naples v. Collier County, 20 F.3d 419 (11th Cir. 1994) 13

Cited Authorities

Page

Holy Spirit for the Unification of the World Christianity v. Town of Newcastle, 480 F. Supp. 1212 (S.D.N.Y. 1979) 8

Kunz v. New York, 340 U.S. 290 (1951) 4, 8

Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood, 699 F.2d 303 (6th Cir. 1983), *cert. denied*, 464 U.S. 815 (1983) 15

Love Church v. City of Evanston, 671 F. Supp. 508 (N. Dist. Ill. 1987), *vacated on other grounds*, *Love Church v. City of Evanston*, 896 F.2d 1082 (7th Cir. 1990) 8, 9

Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981) 4, 15

Milharcic v. Metropolitan Board of Zoning Appeals of Marion County, 489 N.E.2d 634 (Ind. Ct. App. 1986) 6

Miller v. State, 517 N.E.2d 64 (Ind. 1987) 7

Province of Meribah Society of Mary, Inc. v. Muttontown, 148 App. Div. 2d 512, 538 N.Y.2d 850 (A.D.2d 1989) 14, 15

R.A.V. v. City of St. Paul, Minnesota, 505 U.S. 377 (1992) 4

Cited Authorities

	Page
Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969)	4, 8
St. Bartholomew's Church v. City of New York, 914 F.2d 348 (2nd Cir. 1990)	12, 13
Town of Merrillville v. Public Storage, Inc., 568 N.E.2d 1092 (Ind. Ct. App. 1991)	5
Statutes:	
Ind. Code § 36-7-4-918.2	2, 3
Zoning Code, § 15.153.08, *et seq.*	1
Zoning Code, § 15.153.08.130	1, 9, 10
Zoning Code, § 15.153.08.132	2
Zoning Code, § 15.153.08.132(B)	2, 6
Zoning Code, § 15.153.08.132(C)	3
Zoning Code, § 15.153.08.134	1, 2
Zoning Code, § 15.153.08.136	2, 12
United States Constitution:	
First Amendment	i, 1

Cited Authorities

Page

Rule:

United States Supreme Court Rule 10 9

Other Authorities:

2 Young, *Anderson's American Law of Zoning*, § 12.24 (4th ed. 1996) 7

2 Zielgler, *Rathkopf's The Law of Zoning and Planning*, § 20.04 (1997) 7, 13, 14

3 Ziegler, *Rathkopf's The Law of Zoning and Planning*, § 41.01 (1981) 11

3 Ziegler, *Rathkopf's The Law of Zoning and Planning*, § 41.02 1

83 Am. Jur. 2d § 442 14

83 Am. Jur. 2d § 958 1

83 Am. Jur. 2d § 959 10

TABLE OF APPENDICES

Page

Appendix — Special Use Ordinance 1a

I. COUNTERSTATEMENT OF CASE

This case involves a lawsuit brought by a property owner, Kevin J. Wilson (hereinafter "Wilson"), to challenge the facial validity of the Zoning Code of Evansville, Indiana, under the Free Exercise Clause of the First Amendment to the United States Constitution. The property owned by Wilson has been, and continues to be, used by Wilson as a "Church and/or church-operated incidental/accessory facility", as that term is defined at § 15.153.08.134 of the Zoning Code of Evansville, Indiana. At no time has Wilson ever been prevented from using his property for that purpose.

Like almost every other municipality in the United States, the City of Evansville designates certain uses of property under its Zoning Code as "special exceptions" or "special uses".[2] Section 15.153.08, *et seq.* of the Code of Ordinances of Evansville (hereinafter "Special Use Ordinance")[3] is the portion of the Zoning Code that regulates "special exceptions." and its purpose is expressly stated in the ordinance:

> 15.153.08.130. Objectives.
>
> Certain uses are necessary to the life and economic health of the community, but have

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2. The terms "special exception", "special use" and "conditional use" are used interchangeably throughout cases and ordinances. 3 Ziegler, *Rathkopf's The Law of Zoning and Planning*, § 41.02, pp. 6-8; *see also* 83 Am. Jur. 2d § 958, *Zoning and Planning*, p. 802.

3. The Special Use Ordinance was not included in the Appendix to Wilson's Petition for Writ of Certiorari. APC has attached hereto as Appendix "A" a copy of the Special Use Ordinance in question.

> characteristics of operation that do not readily permit classification in the usual residential, commercial, or industrial districts. Because of the various types of uses and locations requiring this special consideration, the specific conditions under which each use may be permitted must be considered. These uses are specifically listed in Section 15.153.08.134. Conditions for the approval of a special use are enumerated in Section 15.153.08.132.

The Special Use Ordinance goes on to classify some thirty-four different uses of property as "special uses", and a "Church and church-operated, incidental/accessory facility" is one of the "special use" classifications. *See* Zoning Code § 15.153.08.134. The Special Use Ordinance specifies the zoning districts wherein each "special use" may be established. *See* Zoning Code § 15.153.08.136, Table A. In Evansville, "Church[es] and church-operated, incidental/accessory facilit[ies]" are permitted as a "special use" in every residential, commercial and industrial zoning district within the City. *See* Zoning Code § 15.153.08.136, Table A.

By both statute and ordinance, those seeking to establish on their property any use of property designated as a "special use" must apply for and obtain a special use permit from the Board of Zoning Appeals of Evansville and Vanderburgh County (hereinafter "BZA"). *See* Zoning Code § 15.153.08.132; *See also* Ind. Code § 36-7-4-918.2. After public hearing on any request for a "special use" permit, the BZA may approve or grant the application upon a showing of compliance with certain criteria specified in the ordinance. *See* Zoning Code, § 15.153.08.132(B). Likewise, the BZA may condition its approval of any special use permit upon a

property owner's compliance with conditions "necessary for the protection of the public interest." *See* Zoning Code, § 15.153.08.132(C); *See also* Ind. Code § 36-7-4-918.2.

On July 28, 1994, Wilson made application with the BZA to obtain a special use permit for Special Use Classification No. 2 (SU-2), "Church and church-operated, incidental/ accessory facility" for property he owns. At a public hearing, the BZA granted Wilson's Application for Special Use Permit, over the objections of several remonstrators. The special use permit was effective for a period of one year from the date of issuance. The imposition of such a one-year time period for a new applicant was the standard practice for the BZA which typically granted permanent approval upon a renewed application at the end of the first year.

On August 3, 1995, a staff member of the APC notified Wilson that the special use permit issued on September 15, 1994, would soon expire, and that he should make application for a new special use permit so as to preserve the property's status as a Special Use Classification No. 2 (SU-2), "Church and church-operated, incidental/accessory facility." Thereafter, Wilson elected not to file an application for a new permit, but instead instituted this action claiming that the Special Use Ordinance was unconstitutional.

II. REASONS FOR DENYING THE WRIT

This Court should not exercise its certiorari jurisdiction, because the Indiana Court of Appeals' decision does not contravene any ruling precedent of this Court. Moreover, the exercise of certiorari jurisdiction in this case will require that this Court review and overturn a state court's interpretation of the meaning of a local ordinance — a

function or responsibility not exercised by the Supreme Court of the United States when reviewing state court decisions, especially where, as here, the municipal code has been interpreted so as not to implicate the very constitutional concerns or questions asserted in the Petition for Writ of Certiorari.

A. The exercise of certiorari jurisdiction in this case will require the Supreme Court to review and overturn a state appellate court's interpretation of the meaning of a local ordinance.

Certiorari review in this case is not warranted because it will necessarily require this Court to review and overturn the Indiana Court of Appeals' interpretation of both the Special Use Ordinance, and its prior appellate opinions — matters that should not be the subject of this Court's certiorari jurisdiction. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 521 – note 26 (1981) ("[D]etermining the meaning and application of that [ordinance] is properly the responsibility of the state courts."); *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377, 381 (1992) ("In construing the [local ordinance], we are bound by the construction given to it by the Minnesota court.") Wilson maintains that the Special Use Ordinance is unconstitutional under this Court's holdings in *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969) and *Kunz v. New York*, 340 U.S. 290 (1951) because the Special Use Ordinance, according to Wilson, vests the BZA with unfettered or "significant" discretion to deny special use approval for a "Church and church-operated, incidental/ accessory facility." However, the Indiana Court of Appeals held that, under its prior precedents, the Special Use Ordinance was not susceptible to such an interpretation, and that the BZA has little, if any, discretion to deny special use approval for a "Church and church-operated, incidental/

accessory facility." *Area Plan Commission of Evansville and Vanderburgh County v. Wilson*, 701 N.E.2d 856, 861-862 (Ind. Ct. App. 1998).

Under Indiana law, a local board of zoning appeals' review of an application for a special exception is distinct and more limited than its review of variance applications. *Town of Merrillville v. Public Storage, Inc.*, 568 N.E.2d 1092, 1094 (Ind. Ct. App. 1991). In fact, applicable Indiana law provides that a board of zoning appeals is under a legal obligation to grant a special exception once one presents evidence showing compliance with the respective special exception criteria:

> [A] Variance is a deviation from the legislated zoning classification applicable to a given parcel of land, while a special exception is a use permitted under the zoning ordinance upon the showing of certain statutory criteria. [citation omitted] The granting of a variance is a matter committed to the discretion of the Board of Zoning Appeals, *whereas the granting of a special exception is mandatory once the petitioner shows compliance with the relevant statutory criteria.* [emphasis added]

Town of Merrillville v. Public Storage, Inc., 568 N.E.2d 1092, 1094 (Ind. Ct. App. 1991).

More importantly, as a matter of Indiana state law, a local board of zoning appeals enjoys little, if any, discretion where one seeks special exception approval for a "Church and church-operated, incidental/accessory facility." As the Indiana Court of Appeals held, any denial of special

exception approval by a local board of zoning appeals is "subject to strict review." *Wilson*, *supra*, 701 N.E.2d at 862; *See also Board of Zoning Appeals v. Schulte*, 241 Ind. 339, 172 N.E.2d 39 (1961) (adverse effect on property values is insufficient reason to deny special permit for "church"); *Board of Zoning Appeals of Decatur v. Decatur, Indiana Company of Jehovah's Witnesses*, 233 Ind. 83, 117 N.E.2d 115 (1954) (lack of off-street parking insufficient reason to justify denial of building permit for "church"). In fact, while Zoning Code, § 15.153.08.132(B) sets forth general criteria for the granting of a special use, any non-compliance with those ordinance criteria would not be valid grounds for the denial of special use approval for a "Church and church-operated, incidental/accessory facility." *See, e.g.*, *Milharcic v. Metropolitan Board of Zoning Appeals of Marion County*, 489 N.E.2d 634, 637 (Ind. Ct. App. 1986) (Criteria set forth by statute for granting variance approval are, "totally inapplicable to religious facilities seeking to use residential property for religious purposes or seeking variance from non-use restrictions applicable to the subject property.") The Indiana Court of Appeals' interpretation of the Special Use Ordinance is consistent with the interpretations which other states have given to similar ordinances:

> In those states which by virtue of the philosophy that maintenance of a church is per se in furtherance of the general welfare, where the establishment of the church is dependent upon the exercise of a local administrative body, the court's obligation is to scrutinize carefully the reasons advanced for the denial of a permit. In these states, the mere fact that a church is the subject of an application changes the ordinary rule as to the burden of proof and places the burden squarely

> upon the administrative officials to justify the denial of the permit.

2 Zielgler, *Rathkopf's The Law of Zoning and Planning*, § 20.04, p. 48 (1997); *See also* 2 Young, *Anderson's American Law of Zoning*, § 12.24, pp. 585-587 (4th ed. 1996).[4]

Thus, as a matter of Indiana law, the Special Use Ordinance confers little, if any, discretion upon a local board of appeals reviewing applications of those seeking special use approval for a "Church and church-operated, incidental/ accessory facility":

> To the extent that the special use ordinance has an effect on Wilson's right to free speech, we find that it does not impermissibly imbue the BZA with unfettered discretion. The ordinance itself clearly indicates that discretion given to the BZA is to be used to help accommodate the special use. Furthermore, we have previously held that a zoning board's denial of a special permit will be subject to strict review. *See Board of Zoning Appeals v. Schulte*, 241 Ind. 339, 172 N.E.2d 39, 43 (1961) (holding that the adverse effect on property values is insufficient reason to deny a special permit to a church); *Milharcic v. Metropolitan Board of Zoning Appeals of Marion*

4. By interpreting local ordinances as conferring limited discretion upon a local board of zoning appeals, the Indiana Supreme Court and Court of Appeals adhere to that cardinal rule of statutory construction in Indiana, which provides that statutes or ordinances should be interpreted to avoid constitutional questions and to support the law's validity. *See Miller v. State*, 517 N.E.2d 64, 71 (Ind. 1987).

> *County*, 489 N.E.2d 634, 637 (Ind. Ct. App.1986) (holding that restrictions upon religious facilities are appropriate only where "the need or benefit which occasions the exercise of police power outweighs the restriction on the rights of freedom of worship and assembly"); *Board of Zoning Appeals of Decatur v. Decatur, Indiana Company of Jehovah's Witnesses*, 233 Ind. 83, 117 N.E.2d 115, 120-21 (1954) (holding that lack of off-street parking was an insufficient reason to justify denial of a building permit to a church). Accordingly, the BZA's discretion to deny a special use to Wilson is severely limited.

Wilson, *supra*, 701 N.E.2d at 862.

Accordingly, Wilson's contention that the Special Use Ordinance confers upon the BZA the kind of unfettered and unlimited discretion that this Court found constitutionally infirm in *Kunz*, *supra*, and *Shuttlesworth*, *supra*, is simply contrary to the Indiana Court of Appeals' interpretation of the Special Use Ordinance — a matter which is not properly the subject of this Court's certiorari jurisdiction, especially where, as here, the state court's interpretation upholds the ordinance's constitutionality.[5]

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5. It is also true that Special Use Ordinance does not constitute a "prior restraint" because it does not restrain anyone from worshiping or otherwise practicing their religious beliefs on their property. *See, e.g., Holy Spirit for the Unification of the World Christianity v. Town of Newcastle*, 480 F. Supp. 1212, 1215 (S.D.N.Y. 1979) ("Plaintiff is not being denied use or access to its property for the exercise of its religious beliefs. There is no prior restraint."); *Love Church v. City of Evanston*, 671 F. Supp. 508, (Cont'd)

B. The Indiana Court of Appeals correctly followed and applied the precedents of this Court.

Wilson also contends that the Indiana Court of Appeals' decision is in error because its application of this Court's holding in *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) to the facts of this case is erroneous. *See* Petition for Writ of Certiorari, pp. 14-17. However, it is fundamental that this Court does not function to exercise its certiorari jurisdiction where the petition merely alleges, "the misapplication of a properly stated rule of law." Rule 10, Rules of the Supreme Court of the United States. Moreover, there is no error in the Indiana Court of Appeals' application of this Court's holding in *Smith*, *supra*.

Under this Court's holding in *Smith*, *supra*, the Special Use Ordinance is a neutral law of generally applicability because it regulates land use, not religious beliefs, and is equally applicable to similar uses of property. On its face, the Special Use Ordinance has as its purpose, the accommodation of certain desirable land uses that cannot be subject to rigid and restrictive classification into the typical residential, commercial or industrial districts:

> 15.153.08.130. Objectives.
>
> Certain uses are necessary to the life and economic health of the community, but have

(Cont'd)
512 (N. Dist. Ill. 1987), *vacated on other grounds*, *Love Church v. City of Evanston*, 896 F.2d 1082 (7th Cir. 1990) (special use ordinance is not a prior restraint "because it does not restrain plaintiffs, or anyone, from worshiping").

> characteristics of operation that do not readily permit classification in the usual residential, commercial, or industrial districts. Because of the various types of uses and locations requiring this special consideration, the specific conditions under which each use may be permitted must be considered. These uses are specifically listed in Section 15.153.08.134. Conditions for the approval of a special use are enumerated in Section 15.153.08.132.

Zoning Code § 15.153.08.130. The stated purpose of the Special Use Ordinance has been recognized as a valid objective of municipalities entrusted with the responsibility of zoning and controlling land use:

> The function of a special permit is to bring some flexibility to the rigid restrictions of a zoning ordinance. . . . Another function of the special use classification is to provide for infrequent types of land use which are necessary and desirable, but which are potentially incompatible with uses usually allowed in residential, commercial, and industrial zones.

83 Am. Jur. 2d § 959, Zoning and Planning, p. 803. It is this legislative accommodation of special uses which necessitates an administrative review of the impact of the special use at a particular location within a given zoning district:

> It has been held that the technique of special uses was developed as a means of providing for types of land use which are necessary and desirable, but which are potentially incompatible

> with uses usually allowed in the particular district; they cannot be categorized as permissible as of right in any given use district without the danger that in some locations therein they would pose serious problems.
>
> The requirement of approval for certain types of activity before they can be permitted in a specified district recognizes that it is impossible to deal in advance, when enacting a zoning ordinance, with all of the problems surrounding the uses which may later be proposed in a particular district. Thus, the requirement for a use permit is set out in the ordinance so that the body entrusted with the task of reviewing the application for a permit for such use can make certain that it would not adversely affect the public interest if placed in a particular location within the permitted zone.

3 Ziegler, *Rathkopf's The Law of Zoning and Planning*, § 41.01, pp. 3-4 (1981). Thus, the Special Use Ordinance does not evidence any intent to regulate religious beliefs, but instead represents Evansville's legislative determination to accommodate certain desirable land uses which do not readily permit classification in the typical residential, commercial and industrial zoning districts.

Moreover, contrary to Wilson's contention, the Special Use Ordinance does not evidence an intent to single out "Church and church-operated, incidental/accessory facilit[ies]" for more restrictive treatment or "additional burdens". First, the ordinance in no way restricts the use of one's property to exercise one's religious beliefs or practices,

and the ordinance specifically provides that a "Church and church-operated, incidental/accessory facilit[ies]" is permitted as a special use within *every* residential, commercial, industrial and agricultural zoning district within the City of Evansville. *See* Zoning Code, § 15.153.08.136, Table A. In addition, the Special Use Ordinance does not lose its neutrality merely because "Church and church-operated, incidental/accessory facilit[ies]" happen to be amongst that category of land uses affected by the Special Use Ordinance. The Second Circuit's decicion in *St. Bartholomew's Church v. City of New York*, 914 F.2d 348 (2nd Cir. 1990) is instructive on this point. In *St. Bartholomew's Church*, *supra*, New York City's Landmarks Law sought to preserve and protect "[a]ny improvement, any part of which is thirty years old or older, which has a special character or special historic or aesthetic interest or value," and New York City specifically designated "St. Bartholomew's Church" as fitting within this category of improvement. The Second Circuit found the law to be neutral and generally applicable, and it reasoned:

> The Landmark's Law is a facially neutral regulation of general applicability within the meaning of the Supreme Court's decisions. It thus applies to "[a]ny improvement, any part of which is thirty (30) years or older, which has a special character or special historical or aesthetic interest or value." N.Y.C. Admin.Code § 25-302(n) (1986).
>
> It is true that the Landmarks Law affects many religious buildings. . . . This, however, is not evidence of an intent to discriminate against, or impinge on, religious belief in the designation of landmark sites.

St. Bartholomew's Church, *supra*, 914 F.2d at 354; *See also First Assembly of God of Naples v. Collier County*, 20 F.3d 419, 423 (11th Cir. 1994) ("[the special use ordinance] . . . makes a special exception for churches. It is neutral on its face and of general applicability.") Thus, just as in *St. Bartholomew's Church*, *supra*, the Special Use Ordinance does not lose its neutrality merely because "Church[es] and church-operated, incidental/accessory facilit[ies]" happen to be amongst that category of land uses which the Zoning Code seeks to accommodate.

If this Court were to exercise its certiorari jurisdiction and later hold that a municipality's classification of a "Church and church-operated, incidental/accessory facility" as a special exception violates the Free Exercise Clause, it would have the effect of not only preventing municipalities from utilizing an effective, accommodating land use practice, it would be invalidating a frequently utilized zoning technique, the propriety of which has never been questioned. In fact, it has long been the universally held view that the classification of a "Church and church-operated, incidental/accessory facility" as a special exception is a proper excercise of a municipality's zoning and planning powers. *See* 2 Zielgler, *Rathkopf's The Law of Zoning and Planning*, § 20.04, pp. 46-47 (1997). This well-settled view is recognition of the fact that such ordinances permit a municipality to accommodate religious uses of property within all residential, commercial and industrial zoning districts, while at the same time giving municipalities the power to impose conditions that may be necessary to mitigate adverse land use impacts that may arise from the erection of a "Church and church-operated, incidental/accessory facility" at a specific location within any given zoning district:

> The purpose of requiring a special permit for a church is derived from a realization of the impact that a church may have upon other property in the district. Requiring a special permit to be applied for and the consequent disclosure of site plans, parking facilities and other features of the particular property, affords an opportunity to weigh the use in relation neighboring land uses and to cushion any adverse impacts by the imposition of conditions designed to mitigate them.
>
> Even in those states in which the church, as a favored use, cannot be excluded either from the community as a whole or from any residential district therein, the requirement of approval of location upon a particular site in accordance with reasonable legislatively designed standards has been held valid.

2 Zielgler, *Rathkopf's The Law of Zoning and Planning*, § 20.04, p. 48 (1997).[6] Accordingly, the validity of such ordinances is well established. *See, e.g.*, 83 Am. Jur. 2d, Zoning and Planning, § 442 ("The right of a municipality to require a special permit for religious uses seems to be firmly established"); *Cochise County v. Broken Arrow Baptist Church*, 778 P.2d 1302 (Ariz. App. 1989); *Christian Gospel Church, Inc. v. San Francisco*, 896 F.2d 1221 (9th Cir. 1990), *cert. denied*, 498 U.S. 999 (1990); *Province of Meribah*

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6. Indiana, like several other states, precludes municipalities from zoning "churches" out of specific zoning districts. *See Church of Christ v. Metropolitan Board of Zoning Appeals of Marion County*, 175 Ind. App. 346, 349-350, 371 N.E.2d 1331, 1333-1334 (1978).

Society of Mary, Inc. v. Muttontown, 148 App. Div. 2d 512, 538 N.Y.2d 850 (A.D.2d 1989); *Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood*, 699 F.2d 303 (6th Cir. 1983), *cert. denied*, 464 U.S. 815 (1983).

Therefore, contrary to Wilson's assertions, the Indiana Court of Appeals correctly applied this Court's holding in *Smith, supra*.

C. The Special Use Ordinance does not impermissibly discriminate against "Christian oriented institutions".

Finally, the Indiana Court of Appeals correctly concluded that the Special Use Ordinance does not operate to discriminate or differentiate between "Christian oriented institutions" and "non-christian institutions". The Indiana Court of Appeals found that, as a matter of Indiana law, the Special Use Ordinance was not susceptible to such an interpretation. Again, the Indiana Court of Appeals' interpretation of a municipal zoning code is not properly the subject of this Court's certiorari jurisdiction. *See Metromedia, Inc., supra*, 453 U.S. at 521 – note 26 ("[D]etermining the meaning and application of that [ordinance] is properly the responsibility of the state courts.") This prudential concern is especially applicable where, as here, the municipal code has been interpreted by the state court so that it does not implicate or raise constitutional concerns or questions.

The trial court below found that the operative definition of a "Church and church-operated, incidental/accessory facility" is limited to "Christian oriented institutions", and therefore concluded that the Special Use Ordinance operates

to exempt "non-christian churches" from its provisions. (Petitioner's Appendix C - Findings of Fact No. 5, Conclusions of Law No. 11, 12). While expressing its incredulity that the definition of "Church and church-operated, incidental/accessory facility" could actually be subject to such a narrow definition[7], the Indiana Court of Appeals held that the Special Use Ordinance could not be interpreted as exempting from its provisions "non-christian churches", and that the trial court's conclusion to the contrary was "clearly erroneous". *Wilson*, *supra*, 701 N.E.2d at 862. The Indiana Court of Appeals reasoned that, under the trial court's interpretation of the Special Use Ordinance, the erection of a "Church and church-operated, incidental/ accessory facility" by a non-christian institution would not be exempt, but rather prohibited and "forbidden" — an interpretation which is constitutionally suspect and which the Indiana Court of Appeals correctly rejected. *Eddy v. McGinnis*, 523 N.E.2d 737, 738 (Ind. 1988) ("If there are two possible interpretations of a statute, and by one interpretation, the statute would be invalid, but by the other

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7. The trial court's finding in this regard was based solely on the fact that a zoning enforcement officer sent to Wilson a Xerox copy of Black's Law Dictionary's definition of "church", in response to Wilson's inquiry regarding the legal definition of "Church and church-operated, incident\accessory facility". One of the definitions of "church" set forth in Black's Law Dictionary, is: "[I]n its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve and propagate his doctrines and ordinances." The trial court did not find that the APC has failed or refused to enforce the Special Use Ordinance as to any "non-Christian church", nor did it find that any "non-Christian church" has ever been exempted from the terms and provisions of the Special Use Ordinance. No such contention was urged by Wilson in the trial court or the Indiana Court of Appeals, and there is absolutely no evidence in the record that would support such a contention.

valid, the Court should adopt the interpretation which will uphold the statute.")

Accordingly, the Indiana Court of Appeals correctly held that Special Use Ordinance cannot be interpreted as exempting from its provisions "non-christian institutions", and its decision does not, as Wilson suggests, "legalize interdenominational discrimination."

III. CONCLUSION

For all the reasons stated above, Respondent, Area Plan Commission of Evansville and Vanderburgh County, by counsel, respectfully requests that this Court deny the Petition for Writ of Certiorari, and for all other just and proper relief in the premises.

Respectfully submitted,

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